

**M e m o r a n d u m**

510.0887

**To** : Merced – Branch Office Supervisor**Date** : April 1, 1985**From** : HQ-Legal (DJH)**Subject** : Straw

This is in reply to your memorandum of January 8, 1985 which enclosed a copy of Auditor S. Adams' memorandum to you of January 7, 1985 which asks the following question: Is straw used in commercial mushroom production a "fertilizer" exempt from sales and use tax under Section 6358?

The clear answer to your question is no. Straw used in commercial mushroom production is not a fertilizer within Section 6358. Nevertheless, your taxpayer is also correct that sales of straw and hay to commercial mushroom producers are not subject to sales or use tax.

The history of this confusing situation is briefly put as follows: The Board staff has always taken the position that straw and hay are "soil amendments" as defined in the Agriculture Code rather than "fertilizer" as defined in the same code and, therefore, are not fertilizer within Section 6358(d) which exempts from sales and use tax fertilizer to be applied to land the products of which are to be used as food for human consumption or sold in the regular course of business. All of this is as in Auditor Adams' memo.

On May 21, 1975, the petition for redetermination of \_\_\_\_\_ and \_\_\_\_\_ was heard by the Board. Such petition originally argued that straw, hay, and peat moss utilized in forming compost to grow mushrooms constitutes exempt fertilizer within the meaning of Section 6358 and Regulation 1588. \_\_\_\_\_ Mycologist, gave impressive expert testimony at the hearing that, regardless of whether or not the definition of "fertilizer" was satisfied, the Board should recognize and give special tax treatment to straw and hay as used in a mushroom compost because of the nutrients provided to mushrooms by the straw and hay. This "special" circumstance was seen as following from the peculiarities of mushrooms as a fungus rather than a plant.

The Board took the petition under submission with the understanding that within 90 days the matter would be ready for Board consideration including necessary proposed changes in Regulations. On October 27, 1975, the petition was again brought before the Board; the Board granted the petition concluding that hay and straw may be purchased for resale when purchased for use as a component for compost to provide essential nutrients for mushrooms which are grown for resale.

We have followed such Board decision since 1975 limiting it, of course, to straw and hay sales to commercial mushroom producers. Regulation 1588 and Annotations 510.0480 and 510.0880 remain valid as to all other sales of straw and hay since the Board's final conclusions on \_\_\_\_\_ petition did not decide that straw and hay were "fertilizers" nor did it give any indication its "resale" rationale as to mushrooms would apply to different factual situations.

We will take steps to update Regulation 1588 so that it will coincide with the revisions to the Agriculture Code which you point out; such revisions have nothing to do with the above described classification of straw or hay. We will give thought to amending the above cited annotations, or issuing a new annotation, giving this specialized treatment of straw and hay sales to commercial mushroom producers.